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U.S. SUPREME COURT, D.C.

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IN THE
Supreme Court of the United States
October Term 1941

No. 1232

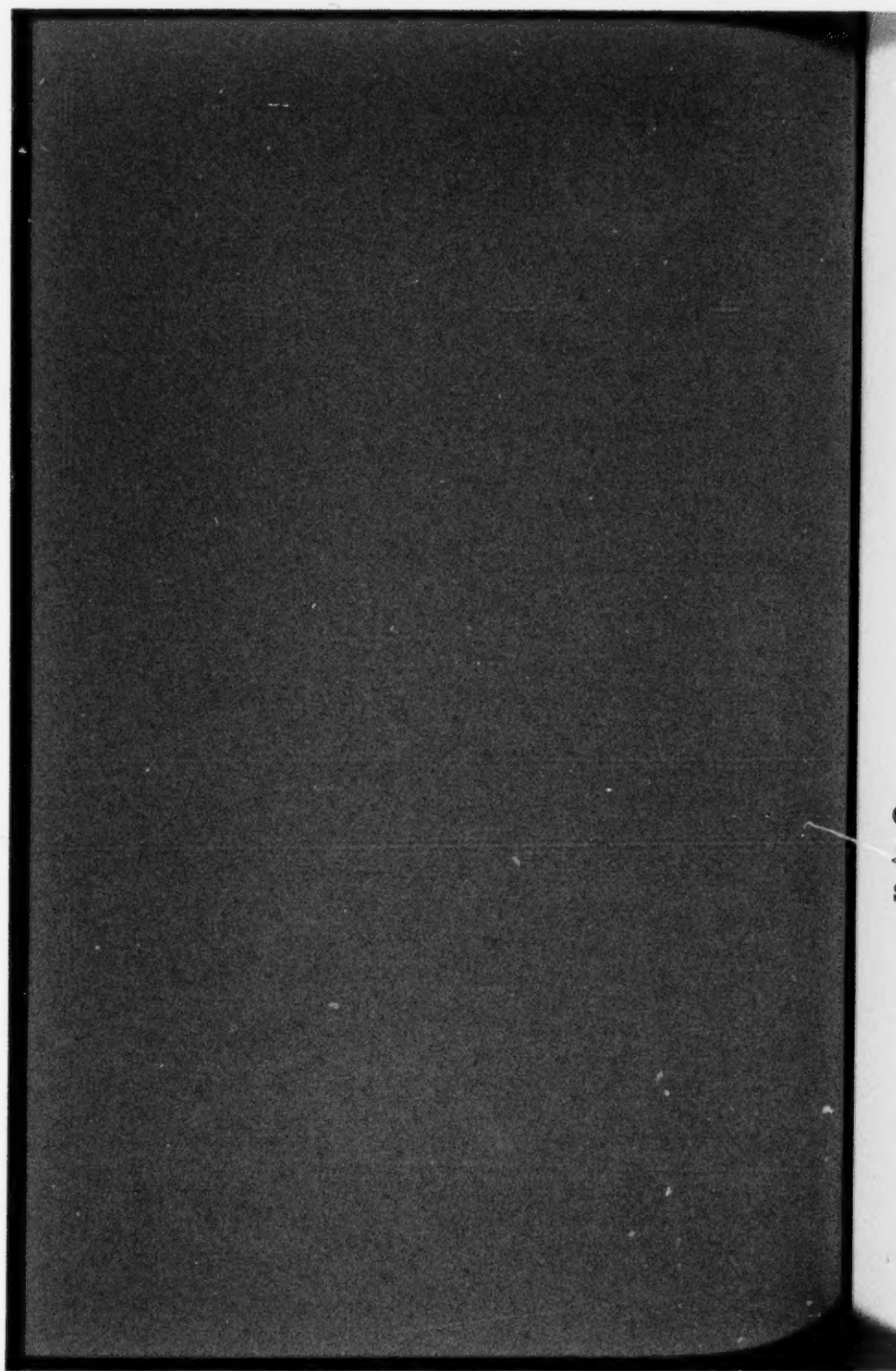
G. F. HOWARD, PETITIONER.

VS.

UNITED STATES ex rel. S. S. ALEXANDER et al.
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI AND BRIEF
IN SUPPORT THEREOF.

G. F. HOWARD, Pet. ex.



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UNITED STATES ex rel. S. S. ALEXANDER et al.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI AND BRIEF
IN SUPPORT THEREOF.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT.

To the Honorable the Supreme Court of the United States:

The petition of G. F. Howard respectfully prays for a writ of certiorari to the Supreme Court to review the decision of the Circuit Court of Appeals of the Tenth Circuit, rendered the 13th day of March, 1942, and to Motion filed March 21, and denied March 25, 1942.

The opinion sought to be reviewed is G. F. Howard v. United States ex rel. S. S. Alexander et al. in pages 1 to 34. Exhibits 34 to 67.

This Court has jurisdiction to review said decision under Section 240 of the Judicial Code (28 U.S.C.A., Sec. 347a).

Statutes involved: Art. 1, Section 8, cl. 3, Due process under the Fifth Amendment, Const. Jud. Code, Section 24 (1), 28 U.S.C.A., Sections 41 (1), (8), (12), (20), (22), (23) and (26,) Rules Civil Procedure, 3-4 (5), 28 U.S.C.A. following Section 723c. Railway Labor Act as amended June 21, 1934, 45 U.S.C.A., Section 151 et seq.; Railroad Retirement Act of 1935 as amended in June, 1937, 45 U.S.C.A. 228a to 228k; Clayton Antitrust Act, Stat. L, Vol. 38, pages 730 to 740, approved October 15, 1914.

The cause has arisen due to the fact that the Third Division of the National Railroad Adjustment Board adopted Rules in conflict with Section 3 (u) of the Railway Labor Act, and by refusing to exercise jurisdiction, and adjudicate individual cases as provided by Sections 3 (i) and (j) of the Act (R. 9 and 19, pars. 10 and 11, R. 20, 21, 22 and 23, R. 89 and 90). (R. 2, 3 and 4 for Referee Swacker's decision). The labor organization is company dominated, therefore it is impossible to get a fair hearing (R. 5 to 7, R. 56 to 62).

QUESTIONS WHICH ARE PRESENTED FOR THE SUPREME COURT'S CONSIDERATION.

1. Appellant moves the Court for a peremptory order, directing Specific Performance of his labor contract, by the Chicago, Burlington & Quincy Railroad Company (R. 11, 24, 25, 26, 27, 28, 29, 30 and 33 for contract, Rule 30 (F)). See Rule 71, Civil Procedure. Or, in lieu thereof, that the writ of mandamus issue commanding the Third Division to retain and exercise jurisdiction, and render a decision upon the merits of the case as provided by Section 3 (h, 3d) (i) and (j) of the Act. See *United States v. Helvering*, 89 F. (2d) 848, column 2. Courts may correct such error on a petition for mandamus, *I. C. C. v. United States*, 224 U. S. 474, *Ex parte Schollenberger*, 96 U. S. 369, et al.

2. To effectuate the policies of the Act, Appellant is entitled to reinstatement in accordance with his labor contract. See *Federal Communication Comm. v. Pottsville*

B. Co., 60 S. Ct. 438; *Associated Press v. Nat'l L. R. Board*, 57 S. Ct. 657; *Mitchell v. United States*, 61 S. Ct. 873, and *Phelps-Dodge Corp. v. Nat'l. L. R. Board*, 60 S. Ct. 845.

3. See R. 23 for Appellant's Praecipe of Summons, if proper service was not made, I suggest the Court decide what shall be done.

4. The contention that the United States can not be sued in cases of this nature, i. e., see Rules 3, 4 (5), 28 U.S.C.A. 723c; *United States v. American Surety Co. of N. Y.*, 25 F. Supp. 700-704; *Phoenix State Bank & Trust Co. v. Bitgood*, 28 F. Supp. 899; *Massachusetts F. D. C. v. United States et al.*, 26 F. Supp. 941; *Delaware R. Co. v. Weeks*, 293 F. 115, and *Fishman v. Marcouse*, 32 F. Supp. 460, par. 1.

5. Appellant desires to submit the case upon the record and briefs without further oral argument as provided by Rule 25.

Wherefore, your petitioner prays that a writ of certiorari may be issued by this court.

Oberlin, Kansas, 5/4/42.

G. F. HOWARD, *Pro se*, Appellant.